

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999
Part 1
GENERAL PROVISIONS

487.14101 Banking powers generally.

Sec. 4101.

(1) Subject to the limitations and restrictions contained in this act or in a bank's articles, the bank may engage in the business of banking and a business related or incidental to banking, and for that purpose, without specific mention in its articles, shall have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated, powers conferred by former 1969 PA 319 and by this act, and the following corporate powers:

- (a) To make contracts.
- (b) To sue and be sued, complain, and defend in its corporate name as fully as a natural person.
- (c) To make, alter, amend, and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the bank.

(d) To enter into agency relationships with affiliated depository institutions. A bank or an affiliated depository institution in its capacity as an agent under this subdivision may do any or all of the following:

- (i) Receive deposits.
- (ii) Permit withdrawals of deposits.
- (iii) Renew time deposits.
- (iv) Close loans.
- (v) Service loans.
- (vi) Receive loan payments.
- (vii) Engage in any activity specifically authorized by this act or by order or declaratory ruling of the commissioner.

(e) To contract, upon 30 days' advance written notice to the commissioner, unless the commissioner objects in writing within 30 days after receipt of the written notice, with a person for the person to act as an agent of the bank in an agency office and engage in any of the activities set forth in section 4109.

(2) A bank has and may exercise the following additional powers:

(a) As authorized by order or declaratory ruling of the commissioner, to exercise at a branch such additional powers consistent with the safe and sound conduct of the business of banking as are granted by the laws of the state, territory, protectorate, or foreign country where the branch is located.

(b) As authorized by order or declaratory ruling of the commissioner, to exercise further powers consistent with the safe and sound conduct of the business of banking or of a business related or incidental to banking as are granted by the laws of the United States or of any state or political subdivision of the United States to financial service providers.

(c) To own and operate a messenger service or to own or invest in an entity that operates a messenger service.

(d) To engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, and to own an insurance agency in whole or in part as provided under that act.

(e) To provide brokerage services for the offer, sale, or purchase of a security or commodity contract.

(3) In addition, a bank has the powers granted by order or declaratory ruling of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14102 Safe deposit and storage department; lien for unpaid rental and storage charges.

Sec. 4102.

(1) If a bank operates a safe deposit and storage department, the legal liability of the bank on account of any loss to a customer shall not exceed the sum of \$10,000.00 for any 1 box or compartment, including all property accepted for storage outside of the box or compartment. The bank may contract with the renter to have the renter assume all risks arising from the use of the box, compartment, or storage.

(2) The bank shall have a lien for unpaid rental and storage charges on the contents of any box or compartment

and any property accepted for storage outside of the box or compartment. If the charges are not paid within 1 year from the date of accrual, the bank may sell the property at public auction upon like notice as is required by law for sales on execution. After retaining from the proceeds of sale the amount of all charges due and owing at the time of the sale, and the reasonable expenses of the sale, the bank shall pay the balance, if any, upon proper showing to the persons entitled to the balance. The bank may fairly and in good faith purchase all or any part of the property at the sale.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14103 Drafts or bills of exchange.

Sec. 4103.

(1) A bank may accept drafts or bills of exchange drawn upon it having not more than 6 months' sight to run, exclusive of days of grace, if 1 or more of the following apply:

(a) The drafts or bills of exchange grow out of transactions involving the importation or exportation of goods.

(b) The drafts or bills of exchange grow out of transactions involving the domestic shipment of goods.

(c) The drafts or bills of exchange are secured at the time of acceptance by a warehouse receipt or other document conveying or securing title covering readily marketable staples.

(2) Except as provided in subsection (3), a bank shall not accept bills of exchange, or be obligated for a participation share in bills of exchange, in an amount equal at any time in the aggregate to more than 150% of its capital and surplus.

(3) The commissioner, under conditions as the commissioner may prescribe, may authorize by order or declaratory ruling any bank to accept bills of exchange, or be obligated for a participation share in bills of exchange, in an amount not exceeding at any time in the aggregate 200% of its capital and surplus.

(4) Notwithstanding subsections (2) and (3), with respect to any bank, the aggregate acceptances, including obligations for a participation share in acceptances, growing out of domestic transactions shall not exceed 50% of the aggregate of all acceptances, including obligations for a participation share in acceptances, authorized for the bank under this section.

(5) A bank shall not accept bills, or be obligated for a participation share in bills of exchange, whether in a foreign or domestic transaction, for any 1 person, partnership, corporation, association, or other entity in an amount equal at any time in the aggregate to more than 10% of its capital and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(6) With respect to a bank that issues an acceptance, the limitations contained in this section do not apply to that portion of an acceptance that is issued by the bank and that is covered by a participation agreement sold to another bank, out-of-state bank, or national bank.

(7) In order to carry out the purposes of this section, the commissioner may define any of the terms used in this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14104 Real estate brokerage.

Sec. 4104.

(1) A bank may engage directly in, or own in whole or in part, a real estate brokerage business as provided under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(2) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall provide written notice of its licensure as a real estate broker or its ownership of a real estate brokerage business to the commissioner within 10 days of licensure or ownership. The notice required by this subsection shall include the name and business address of the real estate brokerage.

(3) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall not do any of the following:

(a) Impose a requirement, verbally or in writing, that a borrower must contract for or enter into any other arrangement for real estate brokerage services with a particular real estate broker.

(b) Impose a requirement, verbally or in writing, that as a condition of approving a loan a borrower must contract or enter into any other arrangement for real estate brokerage services.

(c) Impose a requirement, verbally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, agencies, or service entities.

(d) Impose a requirement, verbally or in writing, that a condition of providing real estate brokerage services is that the customer shall make an application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, agencies, or service entities.

(e) Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate broker.

(f) Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, agencies, or service entities.

(g) Any other activity prohibited by order or declaratory ruling of the commissioner.

(4) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business under this section shall clearly disclose in writing to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to contract for or enter into an arrangement for real estate brokerage services with a particular real estate broker. Compliance with the disclosure requirements of this subsection shall not be necessary when a person applies for credit or prequalification for credit solely for the purpose of refinancing an existing indebtedness.

(5) A real estate brokerage that is affiliated with a bank shall clearly disclose in writing, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract for, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, agencies, or service entities.

(6) The requirements of subsections (4) and (5) do not apply when the person has been given the affiliated business arrangement disclosure statement required by the real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724.

(7) If the commissioner finds that a bank has violated this section, the commissioner may issue an order requiring the bank to cease and desist the activity that violates this section. If the commissioner additionally finds that the violation was knowingly committed, the commissioner may order any of the following:

(a) A civil fine of not more than \$500.00 for each violation but not to exceed an aggregate civil penalty of \$10,000.00.

(b) That restitution be made to a customer for actual damages directly attributable to the acts that are found to be a violation of this section.

(8) An action under this section shall not be brought more than 3 years after the date of the violation that is the basis of the action.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14105 Permitted services or activities.

Sec. 4105.

A bank may perform for others 1 or more of the following services or activities, and any other services or activities permitted by order or declaratory ruling of the commissioner:

(a) Provide life, health, and casualty insurance for officers and employees of financial institutions and operate bonus plans and retirement benefit plans for those officers and employees.

(b) Service mortgages and land contracts.

(c) Originate and service mortgage loans, mortgages, and land contracts, on behalf of financial institutions, corporations, and state or federal agencies or instrumentalities.

(d) Act as escrow agent or depository for other escrow agents or fiduciaries.

(e) Conduct credit analysis, appraising, construction loan inspection, and abstracting.

(f) Conduct research, studies, and surveys.

(g) Develop and operate storage facilities for microfilm or other duplicate records.

- (h) Advertise, broker, and conduct other activities to procure and retain both deposits and loans, but not pool deposits or solicit or promote pooled deposits.
- (i) Provide liquidity management, investment, advisory, and consulting services.
- (j) Establish, own, lease, operate, or maintain electronic funds transfer terminals.
- (k) Purchase office supplies, furniture, and equipment.
- (l) Prepare local, state, and federal tax returns.
- (m) Perform data processing services.
- (n) Subject to applicable state or federal law, provide brokerage services for the offer, sale, or purchase of a security or commodity contract.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14106 Purchase or sale of assets; powers of bank.

Sec. 4106.

(1) With the approval of the commissioner, based upon an examination or other appropriate analysis of either the buying or selling organization, or both, and upon the affirmative vote of a majority of the members of its board of directors and of the holders of 2/3 of its stock entitled to vote, a bank may do either or both of the following:

(a) Sell all or substantially all of its assets of every kind, character, and description and assign its liabilities to any depository institution.

(b) Purchase all or substantially all of the assets of every kind, character, and description and assume the liabilities of another depository institution.

(2) The consideration for a purchase and sale under this section may include shares of stock of the purchasing bank, out-of-state bank, national bank, association, or savings bank.

(3) A purchase and sale shall not be made to defeat or defraud any of the creditors of the depository institutions.

(4) Certified copies of all shareholders' and directors' proceedings under this section shall be submitted to the commissioner and shall contain the terms of the sale and purchase, including a copy of the agreement of sale and purchase.

(5) The liability of a depository institution or of its shareholders, directors, or officers, or the rights of creditors of, or other persons transacting business with, the depository institution shall not be lessened or impaired as the result of a sale of assets under this section.

(6) Notwithstanding any other provision of this act, a bank that purchases or assumes all or substantially all of the assets or liabilities of a depository institution may retain, maintain, and operate the principal office or branches of the depository institution as branches of the purchasing bank without providing notice to the commissioner under section 3711(1) provided it assumes the deposit liabilities of the depository institution maintained at the principal office or branches.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14107 Sale or purchase of bank branch.

Sec. 4107.

(1) A bank may sell 1 or more of its branches, without selling all or substantially all of the bank, to another depository institution located in this state or in a state whose laws would permit a bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A bank may purchase 1 or more branches of another depository institution, without purchasing all or substantially all of the depository institution.

(3) A bank that proposes to purchase 1 or more branches under subsection (2) shall provide notice to the commissioner under section 3711 before operating the purchased branch or branches.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14108 Pledging bank assets as collateral security.

Sec. 4108.

(1) Except as otherwise provided in this section, a bank or bank officer shall not give preference to a depositor or creditor by pledging the assets of the bank as collateral security or otherwise.

(2) A bank may pledge its assets in an aggregate amount that does not exceed 10% of its total assets for the purpose of securing the following:

(a) Funds belonging to the United States or belonging to or being administered by an officer, instrumentality, or agent of the United States, funds of estates being administered by a federal court under a federal bankruptcy law, and other funds when required or permitted to do so under the laws of the United States or an order of a federal court.

(b) Surplus funds of the state held by the state treasurer.

(c) Funds of the Mackinac Bridge Authority, which is declared to be a political subdivision of this state, under 1950 (Ex Sess) PA 21, MCL 254.301 to 254.302.

(d) Funds of the international bridge authority, which is declared to be a political subdivision of this state, under 1954 PA 99, MCL 254.221 to 254.240.

(e) Funds on deposit under 1941 PA 205, MCL 252.51 to 252.64, providing for limited access highways.

(f) Funds on deposit to the credit of the Michigan employment security commission.

(g) Funds of the Michigan state housing development authority constituting proceeds of the sale of the authority's notes and bonds and repayments of those notes and bonds, under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

(h) Funds belonging to any political subdivision of this state.

(i) Funds belonging to any federally recognized Indian tribe.

(j) Funds representing the proceeds of a grant or loan from a department or agency of the United States, the award of which is conditioned upon the recipient depositing the proceeds in an account secured by a pledge of assets of the depository institution.

(3) The requirements, restrictions, and limitations imposed under this section shall not apply to the pledging of an obligation of the United States, direct or fully guaranteed, or both, for the purpose of securing a deposit of the United States when the deposit is established coincidentally with the purchase of an obligation of the United States by or through an institution.

(4) A bank may pledge its assets to secure liabilities of any of the following types:

(a) In the case of member banks, liabilities incurred under the federal reserve act. In the case of nonmember banks, liabilities incurred through borrowing under the same conditions as are imposed upon members of the federal reserve system by the federal reserve act.

(b) In the case of federal home loan bank members, liabilities incurred under the federal home loan bank act.

(c) Liabilities incurred under former section 202 of title II of the federal farm loan act, chapter 245, 39 Stat. 360.

(d) Liabilities incurred on account of a loan made with the express approval of the director under section 4202(3)(c).

(e) Liabilities incurred on account of borrowings from 1 business day to the next from a bank or national banking association of excess reserve balances from time to time maintained by the bank or national banking association under section 19 of the federal reserve act, 12 USC 461.

(f) Liabilities incurred on account of securities sold under a repurchase agreement.

(g) Liabilities incurred in connection with administration of treasury tax and loan accounts.

(5) A bank may pledge its assets to counterparties to secure the counterparties' exposure in interest rate swap transactions.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.14109 Bank agent; activities.

Sec. 4109.

An agent of a bank described in section 4101(1)(e) may engage in any of the following activities:

- (a) Accept a deposit to an existing account and record the addition to the account or give other evidence of receipt as prescribed by the bank.
- (b) Accept a withdrawal form and other evidence required by the bank from an account holder for transmission to the bank.
- (c) Solicit and accept a new account. Evidence of account ownership shall be issued only by authority of the bank. An agent may obtain signature cards from the bank for the account holder. An agent of a bank shall not possess an unissued or blank authenticated savings account passbook or certificate or other evidence of account ownership.
- (d) Solicit and accept an application for a loan or for a land contract purchase. The agent shall submit the application to the bank for processing and approval.
- (e) Disburse withdrawn or loaned funds, upon approval of each disbursement by the bank.
- (f) Accept payment on a loan or on a land contract and issue evidence of receipt as prescribed by the bank.
- (g) Any other services as approved by order or declaratory ruling of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14110 Automatic teller machine located on premises of casino, casino enterprise, liquor store, or adult entertainment establishment; preventing access to cash benefits from Michigan bridge card; definitions.

Sec. 4110.

- (1) A bank that owns, operates, or manages an automated teller machine located on the premises of a casino, casino enterprise, liquor store, or adult entertainment establishment shall work with the department of human services to ensure that the automated teller machine does not allow an individual access to cash benefits from a Michigan bridge card.
- (2) As used in this section:
 - (a) "Adult entertainment establishment" means any of the following:
 - (i) An on-premises licensee that holds a topless activity permit described in section 916(3) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1916.
 - (ii) Any other retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.
 - (b) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.
 - (c) Subject to subsection (3), "casino" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.
 - (d) Subject to subsection (3), "casino enterprise" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.
 - (e) "Gaming" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.
 - (f) "Liquor store" means a retailer, as defined in section 111 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1111, that is exclusively or primarily engaged in the sale of alcoholic liquor. The term does not include a retailer that is a retail food store.
 - (g) "Michigan bridge card" means the card that is used to distribute cash benefits by the department of human services.
 - (h) "Retail food store" means that term as defined in 7 USC 2012.
- (3) As used in this section, the terms casino and casino enterprise do not include any of the following:
 - (a) A grocery store that sells groceries, including staple foods, and is located in a casino or a casino enterprise.
 - (b) Any other business establishment that offers gaming that is incidental to the principal purpose of that establishment.

History: Add. 2013, Act 195, Eff. Feb. 1, 2014

487.14111 Loan promotion raffle or savings promotion raffle.

Sec. 4111.

(1) If authorized by its board of directors, a bank may conduct a loan promotion raffle or savings promotion raffle. The bank shall conduct a loan promotion raffle or savings promotion raffle so that each token or ticket representing an entry in the raffle has an equal chance of being drawn. A bank shall not conduct a loan promotion raffle or savings promotion raffle in a manner that jeopardizes the bank's safety and soundness, misleads its customers, or violates federal law.

(2) A bank shall maintain records sufficient to facilitate an examination of a loan promotion raffle or savings promotion raffle.

(3) As used in this section:

(a) "Loan promotion raffle" means a raffle conducted by a bank where the sole consideration required for a chance of winning designated prizes is the closing on a loan with the bank of at least a specified amount.

(b) "Savings promotion raffle" means a raffle conducted by a bank where the sole consideration required for a chance of winning designated prizes is the deposit of at least a specified amount of money in a savings account or other savings program offered by the bank.

History: Add. 2014, Act 399, Imd. Eff. Dec. 29, 2014 ;-- Am. 2016, Act 162, Eff. Sept. 7, 2016